United Nations E/C.19/2010/12/Add.8

Economic and Social Council

Distr.: General
3 March 2010
English
Original: Spanish

Permanent Forum on Indigenous Issues
Ninth session
New York, 19-30 April 2010
Items 3 and 4 (a) of the provisional agenda*

Discussion on the special theme for the year: "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples"

Human rights: implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Information received from Governments

Guatemala

Summary

The present document contains information regarding follow-up by the Government of Guatemala on the recommendations of the Permanent Forum at its eighth session.

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I. Response to the recommendations made to Governments by the United Nations Permanent Forum on Indigenous Issues at its eighth session related to one or more items of its mandate/agenda and the recommendations made at its previous sessions[1]

A. Economic and social development of indigenous peoples, alternative sources of income[2]

1. According to the report of the Government of Guatemala prepared in response to the questionnaire of the secretariat of the Permanent Forum on Indigenous Issues, a "Midterm evaluation of the Second International Decade of the World's Indigenous People, 2005-2014", over the past five years (2004-2009), the Governments of Guatemala, in line with their public policies, plans, projects and activities, have addressed the following issues, among others related to the rights and requirements of indigenous peoples:

- Evaluation of rural development policies, strategies, programmes and plans related to poverty to ensure their ethnic, cultural and gender relevance
- Promotion of production and entrepreneurial linkages with the goal of ensuring the inclusion of the indigenous population
- Capacity-building in communities, municipalities and subregions in the preparation of assessments and strategic planning
- Promotion of ethnically and culturally relevant social investment programmes that encourage equal opportunities

2. The information on the treatment of the issues related to indigenous peoples referred to above covers two Government administrations: the first, from January 2004 to January 2008; and the second, from January 2008 to January 2012, these being the third and fourth administrations after the signing of the peace agreements.

3. The first administration, as indicated in the 2004-2008 Government Plan, focused on the need to retake the path towards the construction of a prosperous and supportive Guatemala. To achieve that goal, it defined actions based on consensus: ensuring honest government, transparency and austerity and re-establishing the peace agreements as the guiding framework for the activities of the State.

4. The guidelines of that Government established the principles of solidarity and inclusion, defining among the actions to be promoted the constant effort to reduce poverty and promote the practice and experience of interculturality, and the political reform of the State through respect for human rights, a strengthening of democracy and political reform, effective exercise of the rule of law, modernization of the civil service and decentralization and participation, as preconditions for the promotion of citizenship.[3]

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[1] See E/2009/43, paras. 9, 15, 16, 19, 20, 21, 23, 30, 31, 33, 34, 36-40, 47, 48, 52-62, 67, 79-83, 86, 88, 94, 97-99.

[2] Ibid., para. 9.

[3] Assessment of the institutionalization of the identity and rights of indigenous peoples in the executive branch, 2004-2007.

5. In the 2008-2012 administration of Álvaro Colom, the Government plan included four strategic programmes that were the fundamental pillars of government management: solidarity, governance, productivity and regionalization. Their cross-cutting themes consider interculturality, the prioritization of the poorest, gender equity, investment in infants and children, ethics and morals, environmental conservation, civic participation and respect for human rights.

6. The policies current in 2009 that include criteria for addressing the rights of indigenous peoples, including those related to measures to achieve sources of economic income, the conservation of natural resources and the protection of biodiversity, are:

- National Policy for the Advancement and Integral Development of Women 2008-2023
- Public Policy for Coexistence and the Elimination of Racism and Racial Discrimination
- Public Policy for the Comprehensive Protection of Children and Adolescents
- National Policy of Comprehensive Rural Development
- National Policy for the Decentralization of the Executive Branch
- National Food Security and Nutrition Policy
- National Human Rights Education Policy 2006-2015
- National Human Rights Policy 2006-2015
- Social Development and Population Policy
- National Policy for the Development of Micro-, Small- and Medium-Sized Enterprises
- Policy and Plan for Gender Equity in Higher Education 2006-2014
- Agricultural Policy 2008-2012
- Forestry Policy of Guatemala
- Education Policies 2008-2012
- Framework Environmental Management Policy
- National Policy on the Integrated Management of Water Resources

7. In addition to the System of Urban and Rural Development Councils, especially at the community level, examples of good practices include the Guatemalan Indigenous Development Fund (FODIGUA),[4] which is a decentralized national entity with a bipartite structure involving Government and Maya organizations. Geographically, it covers the various Maya linguistic regions and its aim is to support and strengthen the process of human development that is sustained and managed by the indigenous peoples themselves in their communities and organizations as part of their world vision for the improvement of their quality of

[4] The Guatemalan Indigenous Development Fund was established by Government Agreement 435-94, issued on 20 July 1994 and amended by Agreements 500-95, 354-96, 149-97 and 158-2006.

life through the execution and financing of their economic, social and cultural programmes and projects.

8. The Fund's objectives include promoting, supporting and funding projects for social development, social production, infrastructure, institution strengthening, human resources training and cultural development and managing projects to obtain national and international financial resources and technical assistance.

9. The System of Urban and Rural Development Councils is the nucleus that promotes and strengthens the participation and inclusion of indigenous peoples in the design of the plans and projects to be executed in the fields of education, culture, health, human rights, the environment and social and economic development.

10. The preamble to the Urban and Rural Development Councils Act states that "The System of Development Councils must be governed by the principles of the equal dignity and rights of all social actors and must be effective in conditions of equitable opportunities for participation, under peaceful coexistence, in the framework of a functional, effective and participatory democracy and in the decision-making processes and the planning and execution of public development policies".

11. As regards the substantive aspects of Legislative Decree No. 11-2002, in chapter I ("Nature, principles and purpose"), article 1 ("Nature"), it emphasizes that "the System of Development Councils is the principal means for the participation of the Maya, Xinca, Garifuna and non-indigenous population in public affairs, in order to pursue the democratic development planning process, taking into account the national, multi-ethnic, multicultural and multilingual unity of the Guatemalan people".

12. Another example of the participation of indigenous peoples in the formulation of concrete public policies is the experience of the Ministry of the Environment and Natural Resources, based on the Policy of Preservation, Protection and Improvement of the Environment and the Natural Resources (Government Agreement 63-2007).

13. In the case of the Ministry of the Environment and Natural Resources, there was a process with which it began broad and ongoing participation by the different national sectors, especially through the Development Councils and the municipal governments, to review future challenges, allocate resources and establish time frames for execution, to ensure that sustainable development would be obtained with the collaboration of all national actors to benefit the population.

14. With regard to its valuations, the Ministry of the Environment and Natural Resources emphasized that the primary purpose of its efforts to strengthen information and analysis of Guatemala's environment and natural resources was to value them and link them to social, cultural, economic and ecological development.

15. The weighting assigned was not only based on an economic estimate, but also took into account social, cultural and ecological perspectives, which facilitates the sustainable use of natural resources and the environment by the various sectors and the general population, enabling them to satisfy both their physical and psychological needs.

16. The Ministry of the Environment and Natural Resources noted that "as the country's natural wealth is part of the planet's essential systems for preserving life,

valuation should also focus on resources that support the health of the ecosystem by recognizing their intrinsic value and promoting their conservation for future generations, in the same way as a valuation of nature from the perspective of the indigenous peoples (Maya, Garifuna and Xinka) living in the national territory".

17. Environmental planning of land use promotes the recognition and valuation of forms based on custom and tradition, as long as they are in harmony with the sustainable management of natural resources.

18. The National Council on Protected Areas (CONAP) has a Department of Indigenous Peoples and Civil Society, which is responsible for addressing issues relating to indigenous peoples and civil society that affect the management and administration of the country's protected areas. An example of inclusion is the drafting of the bill on the management category of communal lands and the Biodiversity Conservation and Management Policy.

19. With regard to developing alternative sources of income for indigenous peoples, the Rural Economic Development Programme has been launched. It was designed to support national economic development, primarily in rural areas and its purpose is to help increase the income of the rural population, which is mainly indigenous, by strengthening and establishing production chains. Investments are made to remove existing bottlenecks in order to make rural enterprises and areas more competitive.

20. The specific objectives are: (a) to improve the competitiveness of rural-based production chains with broad indigenous participation; and (b) to strengthen the institutional capacity of public entities participating in the project in order to adopt a participatory land management model with indigenous involvement.

21. One of the Government Programme's strategies for meeting this goal is for public agencies, together with the private sector, to provide market access and multisectoral financial investments which are coordinated in both space and time. These investments are directly linked to requests from rural productive organizations which have a market for their products and therefore have great potential for becoming permanent members of a production chain.

22. For the quality of rural life to be improved, productive and economic opportunities, capacities and assets must be increased as part of a competitive framework that enables stakeholders in rural areas to play an active role in local, national and international markets.

23. The selected territories are: San Marcos, Huehuetenango, Sololá, Quetzaltenango, Totonicapán, Chimaltenango, Sacatepéquez and Alta Verapaz. These departments have Kiche', Kaqchikel, Mam, Q'eqchi and other indigenous ethnic populations.

24. One of the Programme's requirements is that at least 80 per cent of its beneficiaries must be indigenous. Coverage will soon be extended to the departments of Baja Verapaz and Quiché, where there are economic activities in need of enhancement.

25. The incorporation of the ethnic perspective at every stage of implementation has been an important aspect of this Programme. This has included a study of relevant international experiences in providing marketing support from the

perspective of indigenous peoples' rights and in identifying forms of community organization used for marketing and technology use.

B. Community consultations, obligations arising from the United Nations Declaration on the Rights of Indigenous Peoples and International Labour Organization Convention (ILO) No. 169[5]

26. The main laws applying to community consultations which the various sectors and social actors have taken into account are: ILO Convention No. 169, in particular article 15; the Political Constitution of the Republic of Guatemala[6] and the Municipal Code.[7]

27. The table below shows data provided by the Pastoral Commission Peace and Ecology (COPAE)[8] on community consultations carried out in recent years on the basis of existing legislation, for projects that impact the rights and interests of indigenous peoples.

Table
Community Consultations
2005-2008

		Locations
No.	*Date*	*Municipalities-department*
1	14-18/05/05	Comitancilio, San Marcos
2	18/06/05	Sipacapa, San Marcos
3	25/06/05	Río Hondo, Zacapa

[5] See E/2009/43, para. 15.

[6] Article 66. Protection of ethnic groups. This article recognizes that Guatemala is made up of different ethnic groups including indigenous groups of Mayan ancestry. The State recognizes, respects and promotes their ways of life, customs, traditions and forms of society.

[7] Article 63. Community consultation. When it is advisable to consult community opinion because of an important issue, the Municipal Council, with the vote of two thirds of its members, may agree to hold such a consultation. Article 65. Consultations with indigenous communities or municipal authorities. When there is an issue that affects the rights and interests of the municipality's indigenous communities or of their own authorities, the Municipal Council shall carry out consultations at the request of those indigenous communities or authorities. This may involve methods based on the customs and traditions of the indigenous communities. Articles 64, 65 and 66. Modalities of consultation and forms of implementation. Specially designed forms may be used for a particular consultation. Notice is given, specifying the issue to be discussed and the date and venues of the consultation, or the communities involved may apply the methods of their own legal system.

[8] Commission of the Social Pastorate of the Catholic Diocese of San Marcos. Its main mission is to support the claims of indigenous peoples in the San Marcos department who consider themselves adversely affected by the natural resource exploitation (mining and hydroelectric) policies of the State of Guatemala, which has granted concessions and licences to transnational corporations. One of its objectives is to contribute to strengthening the rule of law through democratic actions such as community consultations.

		Locations
No.	*Date*	*Municipalities-department*
4	25/07/06	Colotenango, Huehuetenango
5	25/07/06	San Juan Atitán, Huehuetenango
6	25/07/06	Concepción Huista, Huehuetenango
7	25/07/06	Todos Santos Cuchumatantes, Huehuetenango
8	27/07/06	Santiago Chimaltenango, Huehuetenango
9	29/08/06	Santa Eulalia, Huehuetenango
10	13/02/07	Concepción Tutuapa, San Marcos
11	30/03/07	San Pedro Necta, Huehuetenango
12	20/04/07	Ixcán, Quiché
13	12/05/07	San Antonio Huista, Huehuetenango
14	13/06/07	Ixchiguán, San Marcos
15	23/06/07	Barillas, Huehuetenango
16	11/08/07	Nentón, Huehuetenango
17	22/09/07	San Ildefonso Ixtahuacán, Huehuetenango
18	26/10/07	San Sebastián Huehuetenango, Huehuetenango
19	01/12/07	San Miguel Acatán, Huehuetenango
20	18/04/08	Sibinal, San Marcos
21	13/05/08	San Juan Ixcoy, Huehuetenango
22	14/05/08	Comitancillo, San Marcos
23	16/05/08	Tacaná, San Marcos
24	12/06/08	Tajumulco, San Marcos
25	27/06/08	Tectitán, Huehuetenango
26	04/07/08	San José Ojetenam, San Marcos
27	13/07/08	Chiantla, Huehuetenango
28	26/07/08	Jacaltenango, Huehuetenango
29	06/08/08	Santa Ana Huista, Huehuetenango

		Locations
No.	*Date*	*Municipalities-department*
30	30/09/08	Tejutla, San Marcos
31	03/10/08	Aguacatán, Huehuetenango
32	17/10/08	San Pedro Soloma, Huehuetenango

Source: Compiled on the basis of data from COPAE.

28. Community consultations are not binding in nature at this time (January 2010). In order to address the issue of consultations with indigenous peoples, the Congress of the Republic considered, on 18 August 2009, bill No. 4051 on an initiative to approve the law on consultation with indigenous peoples, which was sent to the Indigenous Peoples Commission so that it could consider it and issue an opinion.

29. On 23 September 2009, the legislative Commission referred to issued a favourable opinion concerning bill No. 4051, emphasizing among the background information that it had "studied its contents in detail, for which purpose it consulted specialized legal bodies, prepared a draft text and submitted it for consultation and discussion to various groups representing indigenous peoples. This was done not only to ask for their opinion but also to collect input for the draft from those representatives in order to enhance the vision set forth in the text and also to gain certainty, as far as possible, that it would be feasible and effective for any consultations that may take place".

30. According to the comments of the Commission issuing the opinion, "In its analysis of the bill under review, the Indigenous Peoples Commission observes that the initiative is intended to comply with the requirements of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries; the initiative has therefore established appropriate precepts and procedures for the exercise of the right to consultation and to determine the legal impact of the outcome on administrative or legislative decisions which affect or may affect the rights or ethnic and cultural integrity of indigenous peoples, communities and authorities. This is all without prejudice to other inherent rights of indigenous peoples and communities which may not be expressly included in the law".

31. Similarly, the Commission of the Congress of the Republic of Guatemala appreciated that the areas included are also covered by the provisions of the Agreement on Identity and Rights of Indigenous Peoples.[9] The deputies who are members of this legislative body also appreciated the fact that the provisions of the bill took into account the views expressed by the Constitutional Court on the issue of community consultations.

32. The legislative opinion emphasizes that the purpose of the bill is to regulate the exercise of the right to consultation of indigenous peoples and communities and to make the consultation process mandatory. The deputies noted that the establishment of a council for indigenous consultations as an autonomous body with

[9] An agreement that is part of the Peace Agreements, which were recognized as State commitments through the Peace Agreements Framework Act.

a legal personality and its own assets was under consideration in order to facilitate achievement of the bill's objective.

33. The current situation is that the approval process for the corresponding legislative decree will continue when bill No. 4051 is returned to the plenary of the Congress of the Republic. Approval requires the favourable vote of over two thirds of all deputies.

C. State vigilance to ensure corporate compliance with relevant laws and standards[10]

34. In addition to enacting relevant laws to ensure that corporations fulfil their obligations, such as the Mining Act (legislative decree 48-97),[11] the Government of Guatemala encourages and undertakes such initiatives as the memorandum of understanding signed on 21 August 2009 by the Congress's Special National Commission for Transparency, Citizens Action, the Guatemalan chapter of Transparency International and the Centre for Environment, Legal and Social Action of Guatemala (CALAS). The letter of understanding sets out the responsibilities of the signatories as follows:

- To verify and investigate the awarding of operating licences to the cement factory in San Juan Sacatepéquez and related companies, as well as to the Marlin Project in San Miguel Ixtahuacán, San Marcos
- To verify and investigate the level of citizen participation and the transparency of the process
- To verify whether the environmental impact study incorporates all the necessary mitigation and environmental protection measures for the type of extraction involved
- To evaluate the monitoring, control and transparency of the process
- To draw up a comprehensive report[12]
- To make recommendations

[10] See E/2009/43, para. 16.

[11] Regulates all prospecting, exploration, exploitation and general mining activities. The Ministry of Energy and Mining is the State body responsible for devising and coordinating Government policies, plans and programmes for the mining sector, regulating and settling all administrative matters, and ensuring that this law and its regulations are implemented.

[12] The Special National Commission for Transparency submitted a report to the President of the Congress (23 October 2009) entitled: "*Informe de investigación y verificación del proceso de autorización de las licencias ortogadas a la Cementera en San Juan Sacatepéquez y empresas afines*" (Investigation and verification report on the awarding of licences to the cement factory in San Juan Sacatepéquez and related companies).

D. Recognition of the presence and participation of indigenous peoples in mining activities and infrastructure and development projects[13]

35. Since the signing of the Peace Accords, the Government of Guatemala has carried out various efforts to strengthen the organized social participation of Guatemalan citizens from different backgrounds.

36. The System of Urban and Rural Development Councils is one of the forums which have been created or strengthened strategically by reforming the Urban and Rural Development Council Act (Legislative Decree 11-2002), the Municipal Code (Legislative Decree 12-2002) and the General Decentralization Act (Legislative Decree 14-2002).

37. The responsibilities of the Presidential General Secretariat for Planning (SEGEPLAN) and the Technical Secretariat of the System, particularly at the national, regional and departmental levels, are laid down in the Urban and Rural Development Council Act.

38. The functions of the System of Urban and Rural Development Councils have been systematically strengthened through a process that specifically includes the provision of support to help representatives of indigenous peoples participate in the System.

39. The assemblies have been advised on how to elect representatives of indigenous peoples in various departments, and regional meetings have been held to ensure that indigenous peoples play a stronger role in the System of Urban and Rural Development Councils.

40. Guatemala has gained experience in formulating policies relating to the participation of indigenous peoples, as exemplified by the National Policy for the Advancement and Integral Development of Women 2008-2023, the Public Policy in Favour of Coexistence and the Elimination of Racism and Racial Discrimination against Indigenous Peoples, and the National Comprehensive Development Policy approved in May 2009.

E. Free, prior and informed consent of indigenous peoples[14]

41. In addition to bill No. 4051 providing for the approval of the law on consultation with indigenous peoples, the Congress considered on 11 August 2009 the proposal to approve General Act No. 4047 on the human rights of the indigenous peoples of Guatemala,[15] which is pending the views of the commission on legislation and constitutional issues and the commission on indigenous peoples.

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[13] See E/2009/43, para. 19 and articles 19, 23 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples.

[14] Ibid., paras. 20, 37 and 97.

[15] One of the reasons given for the legislative proposal is that the Guatemalan legal system recognizes that International Labour Organization Convention No. 169 on indigenous and tribal peoples, which has been in effect in the country since June 1996 and obliges Guatemala to facilitate the transformation and adaptation of its existing national laws and to respect the rights of indigenous peoples.

42. Both legislative proposals have provisions for promoting and facilitating the free, prior and informed consent of indigenous peoples on projects and activities affecting their development, participation in public decisions, way of life and cultural rights.

43. Other pieces of legislation include the Mining Act (Legislative Decree 48-97), which requires that information should be provided on mining activities. Chapter III (administrative procedures), article 45 (edicts) provides that: "For applications for an operating licence, the Directorate shall, at the expense of the applicant, order the publication of edicts, for one time only, in the Official Journal and in another publication with wider circulation in the country. Once the Ministry receives the edicts, it will issue a decision within a period of thirty days".

44. Article 46 (opposition) provides that: "Those who consider themselves adversely affected by an application for a mining right may oppose the granting of said mining right by formally notifying the Directorate of their opposition at any time prior to the award decision ...".

F. Patents for products derived from indigenous peoples' resources[16]

45. One of the country's economic policies is to increase the competitiveness of its products on the international market. Guatemala has made many efforts to meet international certification requirements and would therefore consider it an added value to satisfy the patent requirements recommended by the Permanent Forum.

46. It will also consider it an opportunity not only to guarantee respect for the rights of indigenous peoples, but also to dignify their traditional knowledge through its dissemination.

G. Priorities of indigenous women[17]

47. With regard to the priorities of indigenous women and the guidelines for the formulation of public policy, the Presidential Secretariat for Women (SEPREM), as an advisory body and developer of public policy, ensured that indigenous women participated in all areas of the National Policy for the Advancement and Integral Development of Women and in the Equal Opportunities Plan 2008-2023. It also received input from their organizations in the process of drawing up those instruments.

48. The Office of the Defender of Indigenous Women (DEMI) also has a very important role to play. Its mandate is to promote, provide training in, disseminate information on, defend, protect and monitor the observance of the rights of indigenous women, starting with the Peace Accords and international treaties and covenants ratified by the State of Guatemala.

49. DEMI uses specialists to provide free legal advice and social services to indigenous women in their native languages. It also makes public policy proposals based on the real situation and needs of indigenous women to help improve their conditions.

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[16] See E/2009/43, paras. 21 and 23.

[17] Ibid., para. 33.

50. The Institute of Public Criminal Defence (IDPP), pursuant to a mandate derived from article 19 of Decree 22-2008 of the Congress, and the Act against Femicide and Other Forms of Violence against Women, established a free legal assistance service providing public defence lawyers to advise, assist and accompany women, children and adolescents who are victims of violence in all its forms.

H. Participation in the midterm evaluation of the Second International Decade of the World's Indigenous People[18]

51. Institutionally, the Secretariat for Peace (SEPAZ) and the Presidential General Secretariat for Planning (SEGEPLAN), specifically its multiculturalism directorate, as well as the office of the Indigenous Inter-institutional State Coordinator (CIIE) play a major role in gathering the opinions of indigenous peoples.

52. CIIE is a political coordination and consultation body made up of permanent or substitute representatives of State institutions, whose mandate specifically concerns indigenous peoples. It started with informal meetings in 2003 and is now a forum for analysis, discussion and proposals on topics that affect or benefit the Maya, Garífuna and Xinca peoples of Guatemala. It is made up of 25 entities, mostly from the executive branch, providing considerable diversity for the training of officials and civil servants representing the participating institutions and their functional characteristics.

53. The members of CIIE are composed of male and female indigenous and non-indigenous designated representatives holding positions in institutions and programmes created to focus specifically on indigenous peoples. Indigenous officials or civil servants holding positions in State institutions may also become members at the invitation of CIIE and serve as long as they hold those positions.

54. Structurally, CIIE comprises a plenary assembly, a coordinating committee, an executive secretariat and working committees.

55. However, the State of Guatemala must recognize that there were weaknesses in its efforts to promote and facilitate direct and active participation in the midterm evaluation of the Second International Decade of the World's Indigenous People, owing to the limited financial resources earmarked for this purpose.

I. United Nations Declaration on the Rights of Indigenous Peoples as a human rights instrument[19]

56. Guatemala is going through a legal and political transitional period in which it is adjusting to the reality and configuration of current society. This process of change is designed, inter alia, to guarantee the full exercise of the rights of indigenous peoples.

57. The State of Guatemala endeavours to pass legislation based on constitutional standards and respect for international law in the area of human rights.

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[18] Ibid., para. 34.

[19] Ibid., para. 40.

58. One of the reasons given for the enactment of new laws such as the General Act on the Rights of Indigenous Peoples of Guatemala (Legislative Proposal 4047) was the importance of constitutional articles 66 (Protection of ethnic groups), 58 (Cultural identity), 67 (Protection of indigenous land and agricultural cooperatives) and 44 (Rights inherent in the human person).

59. Another key reason was that article 46 of the Political Constitution of the Republic confirms the pre-eminence of international law in the field of human rights.

60. In addressing the rights of indigenous peoples, both the executive branch (which has the power to propose laws) and the legislative branch (which passes laws), take into account the fact that the United Nations Declaration on the Rights of Indigenous Peoples (signed in September 2007) sets out the elements of the rights and obligations that States Members of the United Nations must observe and develop for indigenous peoples.

61. The work of Guatemala's institutions and its public policies are also consistent with the objectives of the Declaration. This can be corroborated by examining the structures and areas of work of agencies such as the Secretariat for Peace, the Presidential General Secretariat for Planning and the National System of Urban and Rural Development Councils (already described in responses to other questions in this questionnaire).

62. The policies current in 2009 that include criteria for addressing the rights of indigenous peoples are:

- National Policy for the and Integral Development of Women 2008-2023
- Public Policy for Coexistence and the Elimination of Racism and Racial Discrimination
- Public Policy for the Comprehensive Protection of Children and Adolescents
- National Policy of Comprehensive Rural Development
- National Policy for the Decentralization of the Executive Branch
- National Food Security and Nutrition Policy
- National Human Rights Education Policy 2006-2015
- National Human Rights Policy 2006-2015
- Social Development and Population Policy
- National Policy for the Development of Micro-, Small- and Medium-Sized Enterprises
- Policy and Plan for Gender Equity in Higher Education 2006-2014
- Policy for the Protection, Assistance and Care of the Guatemalan Community Living Abroad
- Agricultural Policy 2008-2012
- Forestry Policy of Guatemala
- Education Policies 2008-2012

- Public Policy against Trafficking in Persons and for the Integral Protection of Victims
- National Policy against Addiction and Illicit Drug Trafficking
- Framework Environmental Management Policy
- National Policy on the Integrated Management of Water Resources
- National policies relating to culture and sport
- National Policy on the Intangible Cultural Heritage
- Public policies regarding books, reading, writing and libraries

63. Various Guatemalan Government agencies and bodies also disseminate information on international human rights instruments and the United Nations Declaration on the Rights of Indigenous Peoples.

64. Appropriate institutions of the Guatemalan Government that contribute to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples include the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH), (Government Agreement 486-91); the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (Government Agreement 390-2002); the Ombudsman's Office for Indigenous Women (Government Agreement 442-2007); the Guatemalan Indigenous Development Fund (FODIGUA) (Government Agreement 20-2005); the Gender and Multiculturalism Unit of the Ministry of the Environment and Natural Resources (Ministerial Agreement 412-2006); the Department of Indigenous Peoples of the Ministry of Labour and Social Security (Ministerial Agreement 364-2003); Channel TV Maya, established through the granting of television channel five to the Academy of Mayan Languages (Government Agreement 756-2007); the National Reparations Commission (Government Agreement 258-2003 and amendments thereto in Government Agreements 188-2004 and 619-2005); the Mayan Sacred Places and Spirituality Unit of the Ministry of Culture and Sport (Ministerial Agreement 510-2003); the Coordination Office for Indigenous Peoples of the Institute of Public Criminal Defence; the Multiculturalism Directorate of the National Civilian Police; the Indigenous Inter-institutional State Coordinator; municipal legal offices for the defence of the rights of indigenous peoples and popular law offices to provide free legal assistance to persons of limited economic means in municipalities in which there is a large number of indigenous communities; and the High-level Commission to Deal with Issues of Indigenous Rights and of Indigenous Peoples, coordinated by the Ministry of Foreign Affairs.

65. Current laws that may be invoked and applied to ensure fulfilment of the obligations of the United Nations Declaration on the Rights of Indigenous Peoples include:

- Legislative Decree 57-2002, Reform of the Criminal Code, definition of the crime of discrimination
- Legislative Decree 19-2003, National Languages Act
- Legislative Decree 81-2002, Education against Discrimination Act
- Government Agreement 526-2003, which established the Vice-Ministry for Bilingual Intercultural Education

- Government Agreement 22-2004, which expands bilingual education and multiculturalism and interculturalism in the national education system
- Ministerial Agreement 930-2003 of the Ministry of Education on the promotion of and respect for the wearing of indigenous costume by students and technical and administrative staff of official and private establishments
- Government Agreement 126-2004, which declared 21 March of every year the National Day for the Elimination of All Forms of Racial Discrimination
- Government Agreement No. 96-2005, which set up the President's Advisory Council on Indigenous Peoples
- Ministerial Agreement 294-2004, which declared the ethnic drama *Rabinal Achi'* part of the intangible cultural heritage of the nation
- Ministerial Agreement 211-2008, which created local development units in each department of the Republic of Guatemala, taking into account the presence of linguistic communities in more than one department to foster the cultural development of the indigenous population in Guatemala
- Ministerial Agreement 385-2008, which created new community art academies in various municipalities of the Republic of Guatemala, with the aim of encouraging the arts in indigenous communities
- Legislative Decree 11-2002, Urban and Rural Development Councils Act
- Legislative Decree 12-2002, Municipal Code
- Legislative Decree 14-2002, General Decentralization Act
- Legislative Decree 24-2006, which established 9 August of every year as the National Day of the Indigenous Peoples of Guatemala

J. Indigenous language and cultural studies centres[20]

66. The country has the Guatemalan Academy of Mayan Languages (ALMG) and the National Languages Act, contained in decree 19-2003 of the Congress of the Republic, which in its preamble states that "language is one of the foundations underpinning the culture of peoples, being the principle means for the acquisition, preservation and transmission of their world vision, values and customs, in the framework of the national and universal cultures that characterize the Maya, Garifuna and Xinka peoples". It also states that "the Political Constitution of the Republic recognizes the right of indigenous peoples and communities to their cultural identity in accordance with their values, their language and their customs, the safeguarding of those rights being a fundamental duty of the State".

67. Despite the achievements made, it must be recognized that efforts are limited, given the fact that the Maya, Garifuna and Xinka account for 41 per cent of the country's population.

68. The 2008-2012 Education Policies include the Bilingual Education Policy. The Government of Álvaro Colom intends to strengthen intercultural bilingual education by increasing the allocated budget and by holding discussions with the

[20] Ibid., para. 86.

representatives of the indigenous organizations of the intercultural bilingual education model in the country, respecting their world vision, texts, materials and teaching resources, and by increasing the number of bilingual teachers hired at the different levels and in the different forms of education, and improving the working conditions established by the Act to expand intercultural bilingual education.

69. In this field Guatemala also has the Rafael Landívar University's Institute of Linguistics and Education, in the Faculty of Humanities, and its EDUMAYA programme, as well as the San Carlos University of Guatemala and its Language Learning Centre (CALUSAC).

70. Where higher education is concerned, greater efforts are needed to effectively support the creation and operation of the Mayan university, which would be a specific academic body for the study of the language and culture of indigenous peoples, where not only they, but all those who wish to learn about their culture, would have the opportunity to study.

II. Information on how the Government is addressing issues related to the special theme of the ninth session of the Permanent Forum

A. Development of culture and identity[21]

71. To promote the development of the culture and identity of indigenous peoples, the Governments of Guatemala, particularly those of the last five years (2004-2009), have addressed various issues related to public policies, plans, projects and activities, including the following:

- Evaluation of rural development policies, strategies, programmes and plans related to poverty, to ensure their ethnic, cultural and gender relevance
- Promotion of production and entrepreneurial linkages with the goal of ensuring the inclusion of the indigenous population
- Promotion of ethnically and culturally relevant social investment programmes that encourage equal opportunities
- Strengthening of the participatory mechanisms provided for in the Decentralization Act and the Urban and Rural Development Councils Act and Regulations
- Promotion and execution of programmes designed to eliminate racism and discrimination
- Promotion of legislation to eliminate discrimination
- Promotion of legislation to defend the rights of indigenous peoples
- Strengthening of bilingual education
- Dissemination and promotion of the cultural traditions and customs of indigenous peoples

[21] Ibid., paras. 15, 16, 19, 37 and 97.

- Promotion of cultural relevance in State activities and services
- Training for civil servants and employees in areas related to racism and discrimination
- Assessment and inclusion of the medicinal practices of indigenous peoples in State health services
- Review of the systems of pre-investment, investment and geographic distribution, as well as the technical instruments of different institutions for recording statistics, especially the Presidential General Secretariat for Planning and the National Statistics Institute, to ensure that they reflect ethnic and cultural diversity
- Observation and follow-up of international commitments assumed by and recommendations made to Guatemala with regard to indigenous peoples and the fight against discrimination and racism

B. Indigenous peoples and the Millennium Development Goals

72. To promote and safeguard the effective and full enjoyment of the individual, collective and specific rights of indigenous peoples, the Government of Guatemala designs plans, projects and activities, with their corresponding goals, which also seek to achieve the Millennium Development Goals, especially as regards health and education.

73. In its work, the executive branch has broad legal support and policies for the inclusion of indigenous peoples. It recognizes that the country is multicultural, owing to its four cultures, and that they must be given equal representation, weight and status in the State, guaranteeing the practice of democratic values based on freedom, equality, participation and solidarity, and ensuring that the State is pluralistic.

74. The following public policies for the inclusion of indigenous peoples have been planned and are being implemented: national policies on culture and sport; multicultural and intercultural guidelines for the National Education System, including the Public Agenda concerning the Indigenous Peoples as part of the Peace Agreements, 2005-2012; the Policy for the Advancement and Development of Guatemalan Women; the public policy in favour of co-existence and the elimination of racism and racial discrimination in Guatemala.

75. In a similar vein, intercultural programmes and action plans include the National Plan for Long-term Cultural Development, the Equal Opportunities Plan 2001-2006, the Plan of Action for the Full Participation of Guatemalan Women 2002-2012, the Programme for the Realization of the Millennium Development Goals, and the Peace Agreements.

76. As regards education and health, action is being taken to facilitate access to services by widening coverage. At the same time, efforts are being made to ensure that materials and services are of appropriate quality and meet the specific needs and demands of the indigenous peoples.

77. The Government of Guatemala is faced with great challenges. One difficulty is the lack of a budget sufficient to address the gaps to the extent necessary.

Admittedly, a focus on gender and indigenous peoples has not been sufficiently or appropriately integrated into the process of preparing annual operative plans and formulating the budgets of different Government agencies. It should be recalled, however, that the Peace Agreements provide explicitly for the drawing up of plans specifically addressing those two segments of the population.

78. Mr. Miguel Angel Ibarra, Vice-Minister for Foreign Affairs, speaking before the High-level Segment of the seventh session of the Human Rights Council on 4 March 2008, said that the Government was committed to developing a social policy "predicated on human rights, gender equity and respectful and fair interculturality. This will entail a refocusing of the national budget on the development of public policies to bring about a gradual decrease in discrimination, inequity and extreme poverty and make up for major shortcomings in addressing child malnutrition, rural development, unemployment and lack of access to health and education services". The Vice-Minister stressed that "through concerted efforts, we shall advance towards achieving the Millennium Goals".[22]

III. Difficulties in implementing the Permanent Forum's recommendations

79. The main difficulties have been:

- Ignorance by public officials of the domestic and international obligations of the State of Guatemala with regard to indigenous peoples' rights under conventions, declarations and other international instruments
- Prevalence of stereotypes and prejudice against the Maya, Garifuna and Xinka indigenous peoples

80. An overview of the obstacles is provided by the study entitled "Diagnóstico de la institucionalización de la identidad y los derechos de los pueblos indígenas 2004-2007" carried out by the Office of the Vice-President of the Republic of Guatemala and the Presidential General Secretariat for Planning, which contains the following recommendations:

- The category "people" established in the Peace Agreements together with the collective rights enshrined in international laws, particularly International Labour Organization (ILO) Convention No. 169, should be embraced not only conceptually but also in methodological terms;
- So far as political reform is concerned, it needs to be stipulated in the Constitution that Guatemala is a multi-ethnic, multicultural and multilingual country and that the Guatemalan nation is composed of various peoples;

[22] The United Nations reports on progress towards the Millennium Development Goals in Guatemala. "Millennium Goals: Progress report from Guatemala", published in October 2002, described the supporting conditions for the achievement of the Millennium Development Targets as "poor" and "poor but improving". As for attainment of the Goals, comments ranged from "unlikely" to "within reach". The State of Guatemala will, for its part, continue its efforts to achieve the Millennium Development Goals.

- Legal reform requires the political and administrative decentralization and restructuring of the State in the light of the fact that the nation is composed of various peoples, on the basis of socio-cultural and linguistic criteria;
- Financial reform calls for the implementation of outstanding commitments in the ongoing tax reform, first and foremost those aspects to do with equity in tax collection and public budget apportionment and the resulting increase in general and specific public investment in areas having an impact on indigenous peoples.

IV. Factors that have facilitated the implementation of the Permanent Forum's recommendations

81. The State of Guatemala is making efforts to translate into concrete, effective action its political will to advance the implementation of the Forum's recommendations, but it has to be acknowledged that the measures taken by the executive and legislative branches do not match expectations.

82. At Government level, there is a shortage of economic resources; there is also a need for a further strengthening of the structures and activities of public bodies responsible for indigenous issues.

83. In Congress, little progress has been made in placing indigenous issues on the legislative agenda; in addition, it often takes a long time for laws to be enacted in favour of indigenous Guatemalans. Specific commissions exist which not only rule on bills but also make their own proposals. Consequently, the enactment of laws does not keep pace with needs, and some legislative initiatives remain practically at a standstill.

V. National coordinating bodies for indigenous issues

84. Under the last two Governments, steps were taken to strengthen the office of the Indigenous Inter-institutional State Coordinator, a coordinating forum which serves as an umbrella body for indigenous mechanisms whose function has been to help to manage and steer the institutional mainstreaming of indigenous rights in the State, however, this body does not have a sufficient legal basis.

85. A number of financially autonomous institutions concerned with indigenous issues have been established by legislative decree, namely, the Guatemalan Academy of Mayan Languages, the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala, the Office for the Defence of Indigenous Women's Rights and the Guatemalan Indigenous Development Fund. However, they do not necessarily have a coordinating role, as understood in this questionnaire.

VI. Civil service capacity-building programmes on issues concerning indigenous peoples

86. The information, training and awareness-raising activities carried out in various State institutions and offices cannot yet be strictly described as a systematic civil service capacity-building programme on issues concerning indigenous peoples.

87. Examples exist of good practices in the administration of justice. The judiciary and the Institute of Public Criminal Defence have joined efforts to strengthen the translation services of courts and prosecutors' offices in the languages of each region.

88. As at 2009, there was a Maya language translator or interpreter in 62, or 17.22 per cent, of the 360 judicial bodies existing nationwide. Moreover, in some cases interpreters can provide their services in courts other than those to which they have been appointed, if the need arises and a judge so requests.

89. The Institute of Public Criminal Defence provides defence services in indigenous languages for persons of indigenous origin by ensuring the use of their own language in the official judicial system and takes the cultural dimension into account in cases of culture-specific conflicts within communities. It also caters to the needs of the indigenous authorities in their own language, strengthening their role in internal conflict resolution; cultural facilitators discuss these matters with them in their own language.

90. In public defence proceedings, the multi-ethnic, multicultural and multilingual character of the Guatemalan people is recognized by law. Accordingly, indigenous defence offices have been established which serve the population in their own language in:, Santa Cruz del Quiché, Quiché; Nebaj, Quiché; Ixcán, Quiché; Totonicapán, Totonicapán; Quetzaltenango, Quetzaltenango; Santa Eulalia, Huehuetenango; La Democracia, Huehuetenango; San Marcos, San Marcos (through an interpreter); Sololá, Sololá; Santiago Atitlán, Solola (through an interpreter); Mazatenango, Suchitepéquez; Chiquimula, Chiquimula; Puerto Barrios, Izabal; Cobán, Alta Verapaz; Salamá, Baja Verapaz; Santa Elena, Peten.

VII. Information on the promotion and implementation of the United Nations Declaration on the Rights of Indigenous Peoples

91. The Ministry of Foreign Affairs has set up five working groups composed of representatives of the three branches of State with the aim of taking cognizance of and implementing international instruments concerning the rights of indigenous peoples, including the United Nations Declaration on the Rights of Indigenous Peoples. The Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala, for its part, has put out leaflets on the Declaration to make it better known.